

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 119 - SB 244

February 13, 2013

SUMMARY OF BILL: Prohibits a recipient of public assistance from using any portion of public assistance benefits for the purchase of any alcoholic beverage, tobacco product, or lottery ticket. Public assistance is defined as money or property provided directly or indirectly to eligible persons through the Temporary Assistance to Needy Families program (TANF) or, to the extent permitted by federal law, other programs of the federal government, the state, or any political subdivision of the state administered by the Department of Human Services (the Department). A recipient of public assistance is also prohibited from withdrawing or using benefits by means of an electronic benefit transfer (EBT) transaction for the purchase of goods or services in a retail establishment that primarily sells tobacco products, a tattoo facility, a facility providing psychic services, an adult cabaret, or an establishment open to the public where liquor, wine, or other alcoholic beverages or beer are served for consumption on the premises. Upon the first violation, the person will be disqualified from receiving public assistance benefits by means of direct cash payment or EBT access card for one month. Upon the second violation, the person will be prohibited from receiving such benefits for three months. Upon a third or subsequent violation, the person will be permanently disqualified from receiving such benefits. A person who is disqualified from receiving public assistance benefits will have the right to a hearing pursuant to the Uniform Administrative Procedures Act. In addition, a person who commits any violation must reimburse the Department for the prohibited purchase or amount withdrawn or used in a prohibited location, to the extent permitted by federal law.

A person or business entity, or any agent or employee of the person or business entity, is prohibited from accepting public assistance benefits held on an EBT card for the purchase of any alcoholic beverage, tobacco product, or lottery ticket. A person or business entity that violates this prohibition is subject to the following civil penalties: \$100 for the first violation, \$500 for the second violation, and \$1,000 for a third or subsequent violation within five years. A district attorney general may bring an action to suspend the business licenses and permits of the person or business entity for one year for any violation.

The Public Assistance Integrity Fund (the Fund) is established to be used by the Department and district attorney generals for costs associated with the prevention of misuse of public assistance benefits. Civil penalties collected pursuant to violations by persons or business entities accepting public assistance benefits for a prohibited purchase will be deposited into the fund. These funds and excess revenues or interest earned by such revenues will not revert to the general fund at the end of any fiscal year. The Department is authorized to promulgate rules and regulations to effectuate the purposes of the legislation.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures - \$13,600/One-Time
\$182,200/Recurring**

Other Fiscal Impact – Civil penalties collected as a result of violations by persons and business entities will be deposited in the Public Assistance Integrity Fund. Money deposited in the fund will be allocated to the Department of Human Services (DHS) and the district attorneys to offset any costs incurred due to the provisions of the bill. It is unknown how many violations may occur and how much funding will be collected as a result. It is estimated that any fiscal support by the Fund will be in future fiscal years.

Implementation of this bill could jeopardize \$9,576,200 in federal funds. According to the DHS, the restrictions on assistance spending and EBT transactions in the proposed legislation are broader in scope than the federal restrictions enacted by the Middle Class Tax Relief and Job Creation Act of 2012. According to the DHS, under 42 U.S.C. § 609 the Department of Health and Human Services (HHS) will impose a five percent penalty on the state family assistance grant if the state is in violation of federal law. According to the HHS website, the penalty will be imposed on the fiscal year following a final decision by HHS.

Assumptions:

- According to the Department, the number of appeals heard by the Appeals and Hearings Division will increase slightly due to alleged violations of the provisions prohibiting the use of funds for certain purchases and the withdrawal or use of funds at specified locations. According to the Department, no additional employees will be required for appeal processing.
- The Department contracts with an outside vendor for EBT services. EBT transactions will be blocked from ATMs and point of sale (POS) terminals at prohibited locations by the vendor. Initial setup and installation of a blocking system will result in a one-time expenditure of approximately \$4,800 (40 hours x \$120 per hour rate).
- According to the Department, Supplemental Nutrition Assistance Program (SNAP) and cash transactions flow through the same system. To block only cash transactions, all transactions must be examined individually. To block only cash transactions will cost \$.12 per cost per case month. The resulting increase in expenditures for blocking only cash transactions per year is estimated by the Department to be \$73,200.
- According to the Department, ongoing monthly research and support is estimated to cost \$10,800 [(10 hours per month x 12 months) x \$90 per hour rate]. The total resulting increase in recurring expenditures for blocking only cash EBT transactions through the vendor is estimated to be \$84,000 per year (\$73,200 + \$10,800).
- According to the Department, the Investigation Division will need one full-time employee to build, maintain, and update the blocked terminal list and to assist ATM

owners and retailers resulting in a recurring increase in state expenditures of \$69,100 (\$36,400 salary and taxes + \$11,100 benefits + \$21,600 for office space, communications, networking, travel, postage, and supplies) and a one-time increase in state expenditures of \$4,400 (\$3,300 office landscaping + \$200 wiring + \$900 computer/printer.)

- According to the Department, the Investigation Division will need one part-time employee to assist with appeals and hearings related to blocked ATMs and POS terminals resulting in a recurring increase in state expenditures of \$29,100 (\$22,500 salary + \$6,600 for communications, networking, travel, postage, and supplies) and a one-time increase in state expenditures of \$4,400 (\$3,300 office landscaping + \$200 wiring + \$900 computer/printer).
- The total recurring increase in expenditures to the Department is estimated to be \$182,200 (\$84,000 computer programming and maintenance + \$69,100 full-time employee + \$29,100 part-time employee).
- The total one-time increase in expenditures to the Department is estimated to be \$13,600 (\$4,800 computer programming + \$4,400 full-time employee + \$4,400 part-time employee).
- According to the District Attorneys General Conference, enforcement actions taken against owners of ATMs and retailers will result in a workload increase that can be accommodated within existing resources.
- Civil penalties collected pursuant to violations by persons and business entities accepting public assistance benefits for prohibited items and services will be deposited in the Fund. According to the Department, there is no estimate of how many violations will occur within a fiscal year. At least a portion of the Department's and district attorneys' increased recurring expenditures will be supported by the Fund in future fiscal years.
- The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) requires states to prevent the use of TANF assistance in EBT transactions at specified locations (liquor stores, casinos and gaming establishments, and retail establishments providing adult-oriented entertainment). A state that fails to implement and maintain policies and practices necessary to prevent prohibited transactions will be penalized an amount equal to five percent of the state family assistance grant.
- According to the Department, the restrictions on assistance spending and EBT transactions in the proposed legislation are broader in scope than the federal restrictions enacted by the Middle Class Tax Relief and Job Creation Act of 2012. 45 C.F.R. § 234.11 prohibits restrictions on the use of individual assistance. According to the Department, this federal regulation effectively prohibits any state law that imposes restrictions beyond those authorized under federal law.
- According to the Department, under 42 U.S.C. § 609 the Department of Health and Human Services (HHS) will impose a five percent penalty on the state family assistance grant if the state is in violation of federal law. The fiscal year 2012 TANF Block Grant was \$191,523,800. If HHS imposed a five percent penalty, the state would be in jeopardy of losing \$9,576,190 in federal funds (\$191,523,800 x 0.05).

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/ehu